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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Conservatorship of the Person and Estate of
IONE M. EVANS.

CORRINE L. CAGLE, as Conservator, etc.
et al.,

Petitioners and Respondents,

v.

ALBERTA MARTIN,

Objector and Appellant.

E040526

(Super.Ct.No. VCVS 00483)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams,
Judge. Dismissed.

Jay Oberholtzer, APLC and Jay Oberholtzer for Objector and Appellant.

Horspool and Parker and J. David Horspool for Petitioners and Respondents.

1. Introduction

This is an appeal from the trial court's order for a first and final accounting for the conservatorship of the now deceased Ione M. Evans (Evans), filed by temporary co-conservators, Corrine L. Cagle and Corralee A. Longdin (collectively Conservators). Alberta Martin, Evans's sister, filed an objection to the accounting on a number of grounds, including Conservators' failure to give notice to Evans's personal representative in Colorado. The trial court overruled Martin's objection and granted Conservators' petition. On appeal, Martin reiterates the objection raised below. We conclude that, even if notice should have been given to the personal representative, Martin lacks standing to challenge the court's order on this ground. We dismiss the appeal.

2. Factual and Procedural Background

Evans was 95 years old. She had one stepdaughter and one stepgranddaughter, who are the Conservators. She also had one surviving sibling, namely, Martin.

After the death of Evans's husband, Cagle managed Evans's finances under a power of attorney. Cagle moved Evans from Colorado to California in August 2004. Evans lived at the Joy Residential Care Facility in Apple Valley.

In July 2005, Conservators filed a petition asking the court to appoint them temporary conservators of the person and estate of Evans. The court granted the petition on July 12, 2004. Two days later, before letters of temporary conservatorship were issued and a bond was obtained, Evans died, thereby terminating the conservatorship by operation of law.

On October 18, 2005, Conservators filed their first and final account and report of their administration of the temporary conservatorship for the period between July 2005 and September 2005. The court, however, asked Conservators to account for the period commencing with Evans's move to California in August 2004. On February 14, 2006, temporary Conservators filed their amended first and final account and report. During the accounting period, Evans had a prior balance of \$69,298.39 and a total income of \$107,044.61. Evans used \$46,408.21 in cash disbursements for board and care, medical expenses, and other personal expenses. Conservators reported a remaining balance of \$129,934.79. They also reported and requested \$3,490 in attorney's fees.

In March 2006, Martin filed an objection to Conservators' amended first and final account and report. Martin objected to the court's jurisdiction, the validity of the conservatorship, and the length of the accounting period. In her objection, Martin also noted that Conservators failed to give notice to Evans's personal representative in Colorado.

The trial court overruled Martin's objection and granted Conservators' petition. The court approved Conservators' first and final account and report, authorized the payment of attorney's fees, and ordered Conservators to distribute the remaining assets to Evans' personal representative.

3. Discussion

Martin argues the trial court erred in failing to order that notice be given to Evans's personal representative. She also argues that, because Conservators failed to complete the requirements necessary for a valid conservatorship, they were acting under

a purported power of attorney. Martin contends that, even as such, Conservators should have given notice to the personal representative in Colorado.

Conservators argue Martin lacks standing to challenge the trial court's order on the ground that it failed to order that notice be given to Evans's personal representative. We agree.

A. Rules for Conservatorship

Although Martin's sole contention concerns the lack of notice, she also objected both below and on appeal to the validity of the conservatorship. We briefly will set forth the applicable rules and discuss the unusual circumstances of the conservatorship in this case.

The Probate Code provides that the appointment of a conservator is effective upon the issuance of letters of conservatorship and the filing of a bond. (Prob. Code, §§ 2300, 2310, 2320.) When these requirements have not been satisfied, the court acts not without subject matter jurisdiction, but in excess of its jurisdiction. In other words, the court's acts are not void for lack of jurisdiction, but only voidable. (See *Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1091.) The court, therefore, has subject matter jurisdiction, but its acts are open to challenge.

When the conservatee dies, the conservatorship terminates by operation of law. (Prob. Code, § 1860.) After the conservatee's death, however, the court retains jurisdiction over the case to settle the conservator's accounts and for any other incidental purposes. (Prob. Code, § 2630; see *Conservatorship of O'Connor, supra*, 48 Cal.App.4th at pp. 1088-1089; *Conservatorship of Starr* (1989) 215 Cal.App.3d 1390, 1394-1395.)

In this case, Evans died before the court issued letters of conservatorship and Conservators filed the requisite bond. The court granted the temporary conservatorship on July 12, 2005. Evans died on July 14, 2005. Before Conservators could effect compliance with the statutory requirements, the conservatorship terminated by operation of law. Although the court's jurisdiction remained open to challenge, the court retained subject matter jurisdiction to settle Conservators' accounts.

Also, in this case, the court directed Conservators to account for any financial transactions that occurred during the period between Evans's move to California in August 2004 and the time of her death. Cagle, Evans's stepdaughter and one of the Conservators, had been managing Evans's financial affairs during that period under a power of attorney. The court sought to account for all of Evans's income and expenditures in California before turning the remaining assets over to the personal representative in Colorado. Although the conservatorship technically existed for two days, Conservators were responsible for Evans's finances throughout her stay in California. As noted by Martin, Cagle could have filed an accounting as Evans's attorney-in-fact. (See Prob. Code, §§ 4540, 4541.) Cagle and her daughter, however, attempted to provide an accounting through the conservatorship. The court reasonably allowed Conservators to settle their accounts in one proceeding.

Moreover, Martin has failed to show that a miscarriage of justice resulted from the technical defects. (Cal. Const., art. VI, § 13; see also *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 204-205.) As discussed below, Martin's main contention concerns the lack of notice to Evans's personal representative in Colorado. Because

Martin does not have standing to challenge the court's order on this basis, she has failed to assert a cognizable claim, let alone one that involves prejudicial error.

B. Rule for Appeal: Standing

Martin claims that Evans's personal representative was an interested party as defined in Probate Code section 48, subdivision (a), and, therefore, the personal representative should have received notice of the conservatorship proceeding. Although Martin argues that the personal representative had standing to participate in the conservatorship proceeding and object to the accounting, she fails to provide any basis for her own standing to challenge the court's order.

In their brief, Conservators argue that Martin was not an "aggrieved party" under Code of Civil Procedure section 902. Conservators specifically argue that Martin has failed to show how the court's order affected her rights and interests. They note that, while notice was not given to the personal representative, everyone with an interest in the matter (i.e., Evans's beneficiaries) participated in the conservatorship proceeding. Martin and Conservators were Evans's only beneficiaries. Martin has not shown how her interests were affected detrimentally by the accounting. Martin did not submit a reply brief and provided no response to this argument.

We agree with Conservators that Martin was not an aggrieved party. An aggrieved party is one whose rights or interests are affected injuriously by the trial court's judgment. (See *van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 560.) Only aggrieved parties may appeal the court's judgment. (Code Civ. Proc., § 902; see *In re Pacific Std. Life Ins. Co.* (1992) 9 Cal.App.4th 1197, 1200.)

Martin's sole basis for challenging the court's order is that Conservators should have given notice to Evans's personal representative in Colorado. Even if so,¹ Martin fails to show how her rights and interests were affected by the lack of notice. She received notice and fully participated in the conservatorship proceeding. Martin does not point to any improprieties in the conservatorship report itself. The report appears to be in good order. There were no unusual or inappropriate expenditures that would have affected her interest as a beneficiary of Evans's estate.

We conclude that Martin was not an aggrieved party and, therefore, was not entitled to challenge the court's order.

¹ Because of the unusual facts in this case, we note that it may have been appropriate to provide notice to the personal representative. Although the conservatorship statutes do not provide that notice should be given to the personal representative (Prob. Code, § 1460), conservatorship proceedings by definition do not involve persons who have died and whose estates are managed by a personal representative (see Prob. Code, § 1860). The personal representative's position and duties nevertheless are similar to that of a conservator or guardian. And, therefore, where the conservatee has a personal representative, that person should be notified of any proceedings affecting the conservatee's estate. (See Prob. Code, § 1220 [notice to personal representative for other probate proceedings]; Prob. Code, § 1469 [notice to personal representative deemed notice under section 1460 et seq.]; Cal. Rules of Court, rule 7.1006(b) [notice to personal representative for final accounting of guardianship of deceased minor].)

4. Disposition

We dismiss the appeal.

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s/Ramirez
P.J.

We concur:

s/McKinster
J.

s/Miller
J.